



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----, -----) ISCR Case No. 08-02705
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro Se*

April 23, 2009

Decision

WHITE, David M., Administrative Judge:

Applicant accumulated multiple delinquent debts over the past six years for a variety of reasons. After they were placed for collection, and when the collection agencies would not negotiate reduced settlement amounts, Applicant decided not to pay them and just wait until they dropped off his credit report. He entered a debt consolidation plan the day before his hearing, with an initial \$485 payment toward the \$14,136 in consolidated debt. He has not yet established a meaningful track record of resolving his delinquent debt. Based upon a thorough review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on April 13, 2007. On October 7, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised

adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense (DoD) for SORs issued after September 1, 2006. Applicant acknowledged receipt of the SOR on October 17, 2008. He answered the SOR in writing on November 24, 2008, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on January 5, 2009, and DOHA assigned the case to me on the following day.

DOHA issued a notice of hearing on February 4, 2009, and I convened the hearing as scheduled on February 24, 2009. Department Counsel offered Government Exhibits (GE) 1 through 7, which were admitted without objection. Applicant testified on his own behalf, and offered Applicant's Exhibits (AE) A through K, which were also admitted without objection. DOHA received the transcript of the hearing (Tr.) on March 4, 2009.

Findings of Fact

Applicant is a 45-year-old employee of a federal contractor, where he has worked for four years as a logistics specialist. He was married from 1984 to 1989, and married his current wife later in 1989. He has five children, the youngest of whom is 18 and the only one still living with Applicant. In his answer to the SOR, he admitted to 10 of the 21 allegations in SOR ¶¶ 1.a through 1.u. On May 28, 2008, Applicant responded to DOHA Interrogatories under oath, and affirmed the accuracy of the contents of the report of his interview, conducted by an Office of Personnel Management (OPM) investigator on July 23, 2007. All of Applicant's admissions are incorporated in the following findings.

Applicant enlisted in the Air Force in March 1982 and served on active duty until October 1994. Since then he has served in the Active Reserves. He has held a security clearance since 1982, without any adverse security incidents. In 1990, largely as a result of his divorce, he filed for Chapter 7 bankruptcy relief and his debts were discharged. His present delinquent debt started to accrue in 2002. Applicant's family was then living in a different state from where he was working, and he only came home on weekends. His wife did not pay some of their bills, and he discovered this when some collection notices started arriving. (GE 1; Tr. at 56-60, 66-72.)

Applicant sought advice from a financial counselor, who advised him that once the debts had gone into collection status, the damage to his credit score was already done and repaying them would not improve that score. He tried unsuccessfully to negotiate reductions in the interest and fees being claimed by the debt collectors. He told the OPM investigator that he decided not to pay the debts since the creditors and collection agencies would not work with him, and he would just wait seven years for them to drop off his credit bureau reports (CBRs). The six delinquencies from 2002 that remain unpaid are listed in SOR ¶¶ 1.b, 1.e, 1.n, 1.o, 1.p, and 1.r, totaling \$6,026. (GE 2 at 3; GE 3-7 (CBRs); Tr. at 24-29, 36, 41, 48, 71-73.)

Applicant demonstrated that the debts alleged in SOR ¶¶ 1.q, 1.s, and 1.t, are duplicate CBR listings of the debts alleged in SOR ¶¶ 1.k, 1.o, and 1.n, respectively. He

further demonstrated that he successfully disputed the debts alleged in SOR ¶¶ 1.j, and 1.l, which have been removed from his 2009 CBRs. Finally, he proved that he settled and paid the debts alleged in SOR ¶¶ 1.i, and 1.m, for reduced amounts in November 2003, and May 2007, respectively. (AE B; AE C; AE D; AE F; AE G; GE 5 at 2; Tr. at 24-27, 30-35, 37-38, 44-46, 49.)

Although Applicant testified that he has been paying all his debts recently, the CBRs reflect that seven of his outstanding debts became delinquent between 2003 and 2008. These debts, with amounts owed and dates of last activity are alleged in SOR ¶¶ 1.a (\$266/Apr. 2007), 1.c (\$200/Aug. 2007), 1.d (\$100/Jun 2007), 1.f (\$206/Jan. 2004), 1.g (\$189 past due Jan. 2008, total owed \$1,490), 1.h (\$390 past due Nov. 2005, total owed \$1,392), and 1.k (\$511/Aug. 2003). (GE 3-7; Tr. at 38-43, 47, 77-78, 82-83.)

Although he told the OPM investigator that he had no intention of repaying any of his delinquent debts during his July 2007 interview, he received some additional counseling from an Air Force legal assistance attorney concerning the risks associated with that course of action and decided to seek assistance from a credit counseling and debt consolidation service to resolve his debts. On February 23, 2009, the day before his hearing, Applicant entered into a debt management plan agreement consolidating \$14,136 in debts, some of which were not previously delinquent but may become so under the plan's distribution of payments. The plan includes the 13 SOR-listed delinquent debts noted above (¶¶ 1.a, b, c, d, e, f, g, h, k, n, o, p, and r), with a current total balance of \$10,341. The agreement calls for Applicant to pay \$485 to start, and \$460 per month thereafter for 38 months. It also requires him to undergo a financial education course. Upon completion of the agreement in April 2012, the 26 debts in the plan will be repaid. (GE 2 at 3, 7, 8; AE A; Tr. at 21-24, 73-74.)

Applicant and his wife, who recently resumed employment, make sufficient income to meet these debt management plan payments and their other living expenses without incurring additional debt. It is their present intention to resolve their outstanding delinquencies and remain financially responsible in the future. He is pending promotion to paygrade E-9 in the Air Force Reserve, and his military performance reports reflect outstanding evaluations, especially since 2002. He was awarded a Meritorious Service Medal for his performance of reserve duties from March 2002 to June 2003, and was nominated for Wing Senior NCO of the Quarter in May 2004. Former military commanders and supervisors wrote him strong letters of recommendation for positions he was seeking in 2004 and 2007, and his current civilian supervisor provided a strong endorsement of his work performance and character. (AE H - K; Tr. at 59-66, 74-75.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used to evaluate an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context of a number of variables known as the "whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides that "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information.

Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to

protect classified information. An individual who is financially over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying. Applicant's admissions and the Government evidence raised two of these potentially disqualifying conditions: "(a) inability or unwillingness to satisfy debts;" and "(c) a history of not meeting financial obligations." Applicant openly expressed his unwillingness to satisfy a number of his delinquent debts as recently as his July 2007 OPM interview, and despite earning what he claims to be more than sufficient money to cover present living expenses, two of his SOR-listed debts became delinquent after that interview. He successfully disputed two debts formerly listed on his CBRs, and settled two other debts. However, he still carries substantial delinquent debt that he will not fully repay until April 2012 under his current plan. Accordingly, Applicant has demonstrated both present inability and recent unwillingness to satisfy debts, raising concerns under AG ¶ 19(a). He also has a lengthy history of not meeting financial obligations, starting with a bankruptcy discharge in 1990. Six debts totaling more than \$6,000 became delinquent in 2002, when Applicant's wife stopped competently handling their finances. These debts remain unpaid, and another seven SOR-listed debts totaling over \$4,000 became delinquent from 2003 to 2008. His consolidated debt management plan covers more than \$14,000 in present debt, some of which will remain unpaid for the next three years. This history supports security concerns under AG ¶ 19(c). Applicant's pattern of unwillingness and inability to pay his debts, resulting in his lengthy history of not meeting financial obligations, raises substantial questions about his self-control, judgment, and willingness to abide by rules and regulations under which people are expected to fulfill their lawful obligations.

AG ¶ 20 provides conditions that could mitigate security concerns arising from a history of unpaid debt and financial irresponsibility. The five potentially pertinent conditions are:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's presently delinquent debts arose over a six-year period and 13 of those debts listed in the SOR remain delinquent to date. His 1990 bankruptcy was 19 years ago, and largely caused by a divorce that there is no indication might recur. Applicant established mitigation of concerns about this bankruptcy under AG ¶ 20(a), but concerns about his more recent delinquent debts and until recently, his refusal to address them are not mitigated under that provision and cast doubt on his current good judgment and trustworthiness. Applicant also established mitigation concerning his 1990 bankruptcy under AG ¶ 20(b), since it was divorce-related. However, his post 2002 debts all arose while he was happily married, fully employed, and had no reason not to act more responsibly toward them.

Applicant entered a debt management plan on the day before his hearing and made one \$485 payment toward the \$14,136 in covered debts. Financial counseling is also part of this program, thereby beginning to establish mitigation under AG ¶¶ 20(c) and (d). However, in light of his six years of express and conscious refusal to address most of these debts, and last minute action under imminent threat of losing his security clearance, the degree to which this effort can be considered in good faith is questionable. In ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008), the Appeal Board recently discussed an applicant's burden of proof under these mitigating factors:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past

and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Applicant did establish full mitigation under AG ¶ 20(d) concerning the allegations in SOR ¶¶ 1.i, and 1.m, by negotiating and paying settlements of the debts involved. He established mitigation under AG ¶ 20(e) for the debts alleged in SOR ¶¶ 1.j, and 1.l, which he successfully disputed and caused to be removed from his CBRs. He also demonstrated that no independent security concerns arise under SOR ¶¶ 1.q, 1.s, and 1.t, since those allegations reflect duplicate listings of the outstanding delinquencies alleged in SOR ¶¶ 1.k, 1.o, and 1.n.

Whole Person Concept

Under the whole person concept, the administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of the applicant’s conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual’s age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant’s conduct of potential concern involves his recent history of financial irresponsibility that began in 2002 and continued through 2008. His professional performance in active and reserve Air Force service and as a defense contractor has been exemplary. The amount of his delinquent debt is not terribly large compared to his resources, but reflected his conscious choice, until very recently, to ignore collection efforts and refuse to address the debts in the absence of concessions by his creditors. A substantial amount of delinquent debt remains outstanding, despite his having been employed by defense contractors and the

Air Force Reserve throughout this period. He very recently entered a debt consolidation and management program that should resolve his outstanding debts by April 2012 if he follows through with the plan. Having only made the one initial \$485 payment under the plan to date, it is too early to conclude with any confidence that he will do so in light of the previous six years of intentional refusal to address them. The potential for coercion or duress remains unchanged as he has yet to achieve substantial reduction in the number or amount of these debts. His plan will not achieve such reductions for several years, during which time security concerns will continue.

On balance, Applicant presented insufficient evidence to fully mitigate judgment, reliability, and trustworthiness security concerns arising from his recent unwillingness and present inability to satisfy his debts, and his history of not meeting financial obligations. By demonstrating a sufficient period of compliance with, or acceleration of, his debt management plan, such concerns can be mitigated in the foreseeable future given the length and quality of his service to the national defense. At present, however, the record evidence leaves substantial doubt as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, Applicant has not mitigated the security concerns arising from his financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	For Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	For Applicant
Subparagraph 1.t:	For Applicant
Subparagraph 1.u:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

DAVID M. WHITE
Administrative Judge